

Update: Sexual Assault Benchbook

CHAPTER 7

General Evidence

7.4 Selected Hearsay Rules (and Exceptions)

G. Business Records of Medical and Police Personnel

1. Records of a Regularly Conducted Activity—MRE 803(6)

On page 353, insert the following case summary before the case summary of *Solomon v Shuell*, 435 Mich 104 (1990):

♦ *People v McDaniel*, ___ Mich ___ (2003):

The defendant was convicted of selling a packet of heroin to an undercover police officer. A police department chemist analyzed the packet and prepared a report indicating that the packet contained heroin. At trial, the chemist did not testify because he had retired. However, the trial court admitted the lab report into evidence. On appeal, the defendant argued that the lab report was inadmissible hearsay and could not have been admitted under MRE 803(6). The Michigan Supreme Court indicated that the hearsay exception in MRE 803(6) is based on the inherent trustworthiness of business records, and that that trustworthiness is undermined when records are prepared in anticipation of litigation. The Court concluded that “the police laboratory report is inadmissible hearsay because ‘the source of information or the method or circumstances of preparation indicate lack of trustworthiness.’” *Id.* at ___.

CHAPTER 7

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7.4 Selected Hearsay Rules (and Exceptions)

G. Business Records of Medical and Police Personnel

2. Public Records and Reports—MRE 803(8)

On page 356, insert the following case summary before the last paragraph in subsection (G):

♦ *People v McDaniel*, ___ Mich ___ (2003):

The defendant was convicted of selling a packet of heroin to an undercover police officer. A police department chemist analyzed the packet and prepared a report indicating that the packet contained heroin. At trial, the chemist did not testify because he had retired. However, the trial court admitted the lab report into evidence under MRE 803(8). The Court of Appeals upheld the admission and in doing so relied upon *People v Stacy*, 193 Mich App 19 (1992). The Michigan Supreme Court reversed the Court of Appeals and stated:

“[T]he *Stacy* Court held that the exclusion of hearsay observations by police officers was intended to apply only to observations made at the scene of the crime or while investigating a crime. The import of that holding is that MRE 803(8) allows admission of routine police reports, even though they are hearsay, if those reports are made in a setting that is not adversarial to the defendant. We do not deal with such a situation here. The report at issue, prepared by a police officer, was adversarial. It was destined to establish the identity of the substance—an element of the crime for which defendant was charged Thus, the Court of Appeals erred in applying *Stacy*. Because the report helped establish an element of the crime by use of hearsay observations made by police officers investigating the crime, the report cannot be admitted under MRE 803(8). Further, the error cannot be harmless because this was the only evidence that established an element of the crime for which defendant was charged.” [Internal citations omitted.] *Id.* at ___.

CHAPTER 8

Scientific Evidence

8.6 DNA Testing and Admissibility

K. An Indigent Defendant's Right to Appointment of DNA Expert Witness

Insert the following text at the end of subsection 8.6(K) on page 432, after the update from March 2003:

In *People v Tanner*, ___ Mich ___, ___ (2003), the Michigan Supreme Court reversed the holding of the Court of Appeals in *People v Tanner*, 255 Mich App 369 (2003). The Court found that because the prosecutor's DNA evidence offered at trial was entirely exculpatory, the defendant could not show that she could not safely proceed to trial without a DNA expert. *Id.* at _____. In regards to the serology evidence that was offered at trial, the Court noted that the prosecution's expert witness testified that "possibly millions" of people shared the same blood profile as the sample found on the bar sink. The Court held that the defendant did not show that an expert serologist would offer testimony that would "likely benefit the defense." *Id.* at _____. Therefore, the Michigan Supreme Court reversed the holding of the Court of Appeals and remanded to the trial court for reinstatement of the defendant's felony-murder conviction. *Id.* at _____.